

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 28, 2021

Those present at 6:15 p.m.:

Presiding:	Mayor Jerry Clifton District 1 District 2, Sharon Hughes District 3, Jay Bancroft District 4, Dwendolyn Creecy District 5, Jason Lawhorn Deputy Mayor, District 6, Travis McDermott
Staff Members:	City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Chief Purchasing and Personnel Officer Jeff Martindale Finance Director David Del Grande Planning and Development Director Mary Ellen Gray Parking Manager Marvin Howard Parking Supervisor Courtney Mulvanity Planner II Michael Fortner Public Works and Water Resources Director Tim Filasky Public Works and Water Resources Deputy Director Ethan Robinson

1. Mr. Clifton called the meeting to order at 6:15 p.m.

2. **EXECUTIVE SESSION**

A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (4) and (6) for the purposes of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation, but only when an open meeting would have an adverse effect on the litigation position of the public body and discussion of the content of documents, excluded from the definition of “public record” in § 10002 of this title where such discussion may disclose the contents of such documents.

MOTION BY MR. LAWHORN, SECONDED BY DR. BANCROFT: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (4) AND (6) FOR THE PURPOSES OF STRATEGY SESSIONS, INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY AND DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF “PUBLIC RECORD” IN § 10002 OF THIS TITLE WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED. VOTE: 5 to 0.

Aye – Hughes, Bancroft, Lawhorn, McDermott, Clifton.
Nay – 0.
Absent – Creecy.

3. **RETURN TO PUBLIC SESSION**

A. Potential vote regarding direction to the City Solicitor.

Council exited Executive Session at 7:00 p.m.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL AUTHORIZE SPECIAL COUNSEL MAX WALTON TO PROCEED WITH THE LITIGATION AS DISCUSSED.

MOTION PASSED. VOTE: 6 to 0.

Aye – McDermott, Lawhorn, Creecy, Bancroft, Hughes, Clifton.
Nay – 0.

4. SILENT MEDITATION & PLEDGE OF ALLEGIANCE

Mr. Clifton asked for a moment of silence and the Pledge of Allegiance.

Mr. Clifton explained the procedures for the GoToMeeting Platform. He stated that at the beginning of each item, he would call on the related staff member to present and, once the presentation was complete, he would call on each Councilmember in order of district number to offer their comments. If a Councilmember had additional comments to add later, they should signal Ms. Bensley through the GoToMeeting chat function. Members of the public wishing to comment should also signal Ms. Bensley through the chat function with their name, district or address, and the agenda item on which they would like to comment. He noted that for participants logged in by phone, names would only appear as Caller One, Caller Two, et cetera, so it was imperative that the participants inform Council of their identities. He stated that all lines would be muted until individuals were called to speak. All speakers were required to identify themselves prior to speaking and, in compliance with the executive order on teleconference meetings by Governor Carney, votes would be taken by roll call. He continued that it may be necessary to adjust the guidelines if any issues arose during the meeting. He reminded that all lines should be muted until called upon to speak.

5. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Elected Officials who represent City of Newark residents or utility customers (2 minutes): None

6. 1-B. UNIVERSITY

(1) Administration (5 minutes per speaker) (10 minutes):

5:28

Caitlin Olsen, UD Administration, informed that the new UDairy Creamery Café opened on Main Street and would serve all of the UD Creamery items as well as a full coffee drink menu, sandwiches, light fare, and UD Creamery Cheese. She stated the Café would be located in the old administration building where the Starbucks was previously located.

Ms. Olsen explained that UD Administration asked that UD employees who would be using facilities in the fall provide proof of full vaccination against COVID-19 otherwise, the employees would follow regular testing protocol. She confirmed that employees and students would provide documentation and shared that there were currently different masking guidelines but reminded that the standard was fluid.

Mr. Clifton clarified that the café location was in the old school district building which Ms. Olsen confirmed.

7. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes per speaker) (2 minutes): None

8. 1-C. CITY MANAGER (10 minutes):

7:55

Mr. Coleman informed that there was another Alfresco event on Wednesday, the fireworks were scheduled for Friday evening, and Cleveland Avenue roadwork was starting the week after the 4th. He noted a significant part would be completed overnight but there would be some impact during the day.

9. 1-D. COUNCIL MEMBERS (5 minutes):

8:19

Dr. Bancroft:

- Thanked Ms. Olsen for the update
- Looked forward to working with either Christina MacMillan or John Suchenac following the election
- Noted the Diversity Commission was filling up and appreciated that the Commission would consider the community broadly

Mr. Lawhorn:

- Asked Mr. Coleman to forward an email with the scope of the Cleveland Avenue work. Mr. Coleman confirmed.

Mr. McDermott:

- Received complaints about overflow parking at the reservoir and had met with Mr. Spadafino about the planned Paper Mill Park project. He wanted Council's thoughts on the feasibility of moving forward with the temporary parking portion of the park and associated crosswalks along Old Paper Mill Road as well as if there was Council support to explore funding for the portion of the park to address overflow parking. He asked Mr. Coleman to comment on the feasibility and for Council to determine support for City staff to investigate. Mr. Coleman confirmed that staff could investigate pending Council's direction and believed the parking lot was likely the easiest but warned that the challenge was that the road belonged to DelDOT so coordinating the DelDOT entrance permit and crosswalks would be the larger challenge. He was not prepared to offer a timeline and wanted to speak to staff to develop a plan but confirmed the request could be accelerated if Council chose. Council unanimously supported the request.

10. 1-E. **PUBLIC COMMENT (5 minutes per speaker) (10 minutes):** None

11. 2. **APPROVAL OF CONSENT AGENDA: (1 minute)**

- A. Approval of Council Meeting Minutes – June 14, 2021
- B. Receipt of Alderman's Report – June 8, 2021
- C. Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the Purchase of a Pickup Truck based on Utilizing State of Delaware Contracts for CIP WEQSF
- D. ***First Reading – Bill 21-19*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating the Recruitment and Selection Process for Police Officers – ***Second Reading – July 12, 2021***
- E. ***First Reading – Bill 21-20*** – An Ordinance Amending Chapter 13, Finance, Revenue and Taxation, Code of the City of Newark, Delaware, By Permitting the City to Authorize the State of Delaware to Collect City Lodging Taxes – ***Second Reading – July 12, 2021***

13:00

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MCDERMOTT, SECONDED BY DR. BANCROFT: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Hughes, Bancroft, Creecy, Lawhorn, McDermott, Clifton.

Nay – 0.

12. 3. **APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:** None

13. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

14. 5. **SPECIAL DEPARTMENT REPORTS:**

- A. General Assembly Update and Associated Requests for Council Direction – Lobbyist (25 minutes)

14:42

Rick Armitage, Armitage & DeChene Associates, revealed that the City had a good year with events in Dover and informed that the General Assembly would finish on or around Wednesday. He noted the money bills had been released for review and the Bond Committee Municipal Street Aid remained at \$6 million, as in 2020, because the State essentially appropriated nearly \$30 million towards suburban street rehabilitation. At the request of the Legislature, the Department of Transportation (DOT) created a list of street conditions throughout the State, with a grading from poor to good, and would use the \$30 million to address streets, beginning with the worst. He continued that there was an unprecedented \$1.35 billion in the Bond Bill and he anticipated some improvements in road conditions State-wide.

Mr. Armitage reminded that the lobbyists had been working on changing the epilogue language related to the Newark Reservoir and announced that the City was relieved from repaying the \$3.4 million grant from the Legislature to assist with the reservoir's land purchase. He informed that the current zoning was residential or farmland, and the new epilogue language prohibited intense residential development, such as high density or commercial. He reiterated that the City was relieved from repayment whether the location was annexed into the County and the zoning restrictions would remain the same. He noted the Energy Efficiency Investment Fund was previously unable to support a project to install solar panels at the Newark Reservoir but, given the amount of funding available this year and the requests from members, the requests were returned to each of the caucuses to spend \$70 million on projects in their own districts.

He informed that the Controller General staff was occupied with delivering the three money bills to the public and the Legislature for review prior to returning to session the following day and explained that he had been unable to have a detailed discussion to determine if any of the Legislators requested funding for the project. He confirmed that he would follow-up with those who had specifically requested that funding be included in the bond bill and assumed that there would be a consortium of legislators in the Newark area who would help the lobbyists support the project.

Mr. Armitage shared that the Bond Bill included parameters for debris pits but did not believe that the City had any although they had been allowed in the County for years. The Legislature increased the funding for some pits from \$500,000 annually to \$1 million and asked that the County match the funding. He informed that the Polly Drummond Green Waste Site would continue for at least another year and that Delaware State was added to the Real Estate Transfer Tax (RTT) exemption in Section 72 in the Bond Bill. He continued that Unicity was funded at the same level as the previous year, the lobbyists were still waiting to see whether the DOT would have a pilot program in Newark similar to Uber, and noted that the program had been delayed because the University had been shut down for a year. He shared that the City would receive another \$400,000 grant-in-aid appropriation as in the last three years. He informed that the wide-spread broadband would likely be covered by mostly Federal funds but the amount was yet unknown because so much was currently in transition. He revealed that the plan was to increase broadband coverage statewide to 90% of the population and the lobbyists would continue to monitor. He noted the President's infrastructure bill would have bipartisan support and would likely move forward.

Mr. Armitage shared the updated table with Council and was unsure if there were any specific questions. Mr. Clifton stated that he was first introduced to the proposed "government Uber system" in January 2020 with Ms. Gray and Mr. Coleman. Ms. Cohen assured Mr. Clifton that the program was on DelDOT Secretary Nicole Majewski's priority list and would change the ability to get around the City in a tremendous way.

The Mayor opened to table to Council comment.

Dr. Bancroft interjected that one-time purchases of broadband and solar arrays were appropriate for the stimulus funding, but he was concerned about funding accounts for ongoing projects. Mr. Armitage replied that the Bond Bill specifically stated that if Federal funding came through, it would supplant or replace items where State funding was utilized so there would be flexibility without requiring new legislation to use Federal funding and the items could be reprogrammed. He continued that the Legislature planned to work the following two days and the lobbyists would report on any pertinent issues and update the table.

There was no public comment and the Mayor returned the discussion to the table. Mr. Clifton thanked Mr. Armitage and expressed his appreciation for the Legislators' efforts.

15. 5-D. DISCUSSION AND DIRECTION TO STAFF REGARDING A POTENTIAL DEVELOPMENT MORATORIUM IN THE BB AND RA ZONING DISTRICTS – CITY MANAGER/PLANNING AND DEVELOPMENT DIRECTOR/CITY SOLICITOR

25:04

Mr. Clifton informed that items 5B, 5C, and 5D would be discussed in unison with the exception that 5D should be discussed first because the decision would affect the other two issues.

Mr. Bilodeau reminded that at the last Council meeting, Mr. Clifton suggested a discussion on a moratorium for the BB and RA districts. Staff investigated whether the moratorium would be in the City's best interest. He informed that moratoriums were generally ripe for litigation if improperly done and warned there was always a potential that they would be challenged. He explained that the first consideration was the authority to impose a moratorium and he firmly believed that the City had the authority to impose under its general land use powers as well as in the City Charter. He acknowledged the number of cases that indicated the need for specific authority to impose a moratorium and felt it was required for the City. He noted that Kent County had a recent moratorium under the authority of general land use power to regulate zoning and instructed that a moratorium required a proper purpose. He explained there were two general types of purposes; one was to address an emergency situation, such as a sewer system's inability to handle further capacity where the sewer would have to be fixed to allow for additional capacity, and another was to pause the consideration of land use applications to allow for long-term zoning changes. He added that another key point was that moratoria were for a limited duration of generally 9 to 12 months and could be subject to challenge.

Mr. Bilodeau informed that from a procedural standpoint, the moratorium would first need consideration from the Planning Commission and a first and second reading for an ordinance before

Council could vote to impose. He estimated that it would be early fall before everything could take place. Staff's general consensus was that it would be better to devote the City's resources and assets to the recodification of the BB and RA zones and handle applications in due course versus imposing a moratorium. He explained that a moratorium would not be imposed until September which offered opportunity for a flood of land use applications before the deadline closed so staff would still have to consider the applications while working on the recodification. He reiterated staff's belief that the City would be better served by not imposing a moratorium but rather working towards recodification as long as there were sufficient assets and resources available to the Planning Department.

Mr. Coleman stated that in addition to the concern of a rush of plans submitted before the start of the moratorium, the City did not need to be in the wrong to be sued and the same staff members would be defending the suit as would be working on the recodification, which would only add additional hurdles to a successful completion. Because the moratorium had a set time frame, the more hurdles staff encountered, the less likely the work would be completed in time. He explained that the worst-case scenario was that there would be a moratorium where staff did not complete the recodification in time so the outcome would be that the City incurred legal fees and Code would remain unchanged. He reiterated that staff's preference was to focus on the Code change, ordinance changes, and the associated public processes. He noted that staff requested additional resources, regardless of the BB/RA zoning discussion, but some were directly associated with the Code revision process. He reiterated staff's suggestion to devote resources to recodification.

The Mayor instructed that the discussion was for item 5D and opened the table to Council comments.

Mr. Lawhorn understood why a moratorium made sense but thought that deeper investigation into the requirements and legal risks rendered a moratorium counterproductive because of the drain on staff time. He pointed that the moratorium would not apply to the long list of projects already in the City's pipeline or to those that would be rushed to beat the deadline. He assumed there was a strong probability that the plans would be poorly prepared which would further drain staff resources. He noted the process would take several months and agreed it was wiser to devote funding and time towards improving City Code. He added that there were many projects that were beneficial to the City and the tax burden on residents, so he did not want to see the gains for the community put at risk. He was hopeful that other Councilmembers would direct staff to eliminate the moratorium from consideration.

Mr. McDermott agreed with the legal experts and was hesitant to open the City to unnecessary litigation. He agreed with Mr. Lawhorn.

Ms. Creecy agreed with previous Council comments. She asked Mr. Coleman if the City could be sued regardless and Mr. Coleman confirmed that the City could be sued for any reason at any time. He did not believe that there would be legitimate grounds for suit if the zoning codes were changed as long as staff followed the proper processes. He deferred to Mr. Bilodeau's judgement.

Dr. Bancroft agreed with previous Council comments and deferred to senior professional staff. He did not think that parking waivers should be expected without great reason and suggested that the recodification could allow for some leeway so that the City could maintain staff capacity. He suggested that the Finance Director could weigh in on monetary concerns for special projects, but Council needed to do right for the residents.

Ms. Hughes agreed with previous Council comments and thought the best resolution was through other available means and cleaning it up in-house. She assumed the term "moratorium" would cause concern and trigger aggression, so she wanted to proceed with sensitivity.

Mr. Clifton appreciated Mr. Bilodeau's efforts and acknowledged the potential pitfalls of which staff needed to be aware. He was confident that Council could find a way forward through discussions on agenda items 5B and 5C.

Mr. Clifton asked if a vote was necessary to determine Council's direction and Mr. Bilodeau said that a vote was unnecessary.

The Mayor opened the floor to public comment.

Ms. Bensley informed that Will Hurd, Planning Commissioner Chair, signed up for all three items but sent a message saying that he did not have a comment for this item.

There was no further public comment and the Mayor returned the discussion to the table.

16. 5-B. BUDGET AMENDMENT TO ADD FUNDING TO THE PLANNING AND DEVELOPMENT DEPARTMENT CONTRACTUAL SERVICES BUDGET FOR REVIEW OF THE BB AND RA ZONING DISTRICTS – CITY MANAGER/PLANNING AND DEVELOPMENT DIRECTOR (60 MINUTES COMBINED FOR ITEMS 5B, 5C AND 5D)

40:56

Mr. Clifton reintroduced the discussion for 5B and 5C and instructed that they would be discussed and have public comment in unison.

Ms. Gray reported that the City was experiencing an increase in development activity and demand for planning services while staff resources remained unchanged. She indicated the demand was most notable in the downtown area, which resulted in Council's attempt to revise the BB (Central Business District) zoning code. Additionally, the increased COVID funding to the Community Development Block Grant Program (CDBG) increased the demand for staff time required to run the program while still meeting all reporting requirements. She listed a number of upcoming projects for FY2022, including implementing the Rental Housing Workgroup's recommendations, continued work on the Transportation Improvement District (TID), implementation of the Newark Sustainability Plan, revisions to the subdivision review process, and revisions to the parking codes, all which required significant staff time and resources.

Ms. Gray continued that the increased demand on current staffing resources presented an increasing challenge to maintain plan review times and customer service, as well as maintaining time for long range and community planning with the City Manager, Planning Commission, Council, staff, and City residents. In response, staff created a plan that included a request for funding for a permanent position for a Deputy Planning and Development Director, two full-time temporary Planner positions for a period not to exceed two years, and a consultant. Given the sense of urgency regarding the current and proposed level of development activity, the upcoming FY2022 proposed ordinance activity, and Council's request to revise the BB zoning ordinance, staff requested immediate funding for the positions versus waiting for the FY2022 budget process. She explained that if the funding was approved for the Deputy Planning and Development Director, the position would help manage the day-to-day activities in the Land Use Division and serve as the back-up for the Planning and Development Director during absences. Upon review of other Deputy positions in the City and similar positions in other planning departments in Delaware, the new hire would be Grade 28. Assuming the position could be filled on October 1st, the total cost of non-salary expenses would be \$37,000, and the full annual burdened rate of salary with benefits would be \$145,000.

Ms. Gray continued that the request of two full-time Planner positions (for a period of no more than two years) would be reassessed after the contractual period to determine if the positions should be recommended to be made permanent. She explained that one position would review building permits, land use plans, process special use permits and vendors licenses, assist the Planning and Development staff on related reports, provide land use-related assistance to the public, and provide support the related day to day land use activities. The second position would assist the Planner II with administering the CDBG Program, including COVID-19 related funding, the Revenue Sharing Program, assist with the management of the Unicity bus system, and liaise with The Newark Partnership in economic development and Main Street activities. She reported that if the positions were filled by August 1, the total cost with non-salary expenses would be \$76,000 and the full annual burdened rate for both positions would be \$178,000. She informed that staff estimated the need for an additional \$15,000 (\$5,000 each) for equipment related to computers, monitors, furniture, desks, and phones to fully support and outfit the additional positions.

Ms. Gray progressed to the topic of revision of the BB and the potential revision of the RA, multi-family dwelling, high-rise apartments zoning districts. She reminded that there had been several controversial land use projects in the downtown district which resulted in Council's request to review and revise the BB zoning code as well as potentially revise the RA zoning code. The effort would include a community-wide engagement process, or Charette, to determine how residents and Council wanted the downtown area to look, its uses and functions. Once the uses and functions of the downtown were determined through the Charette, staff and consultants would heavily engage with stakeholders, the public, the Planning Commission, and Council to bring proposed revisions to the BB and potentially RA zoning districts to Council for review and adoption. She explained that consultant assistance was necessary for the Charette, public engagement, and drafting the revisions because City staff lacked the expertise to conduct a Charette. Given the urgency of the project, outside expertise and recommendations on Code revisions were key to the project's success. The estimated cost was \$125,000 and the funds would be adjusted from the General Fund reserves to the Planning and Development's Consulting Fees budget. She noted that if the resources were ascertained, the full effort to rewrite BB and RA was anticipated to take 16 months. She informed Council that a workplan had been provided in the

packet and concluded that the plan would enable the Planning and Development Department to keep up with current development and CDBG activity, reduce the review times to traditional levels, improve customer service, and the requested revision to BB and potentially RA ordinances.

Mr. Coleman informed that he had been working on a Planning Staff supplement with Ms. Gray to consider adding staffing capabilities leading up to the suggestion of BB and RA zoning districts reviews. He explained that much of the request would have been requested anyway but there were additions specifically associated with the review of the zoning classifications. He continued that staff wanted to add the positions for workload issues because current staff review times were significantly longer than historical averages and were mostly driven from the volume of plans in review and various initiatives underway. He referred to pages 5, 6, and 7 of the attachments that highlighted the various items that the Department had been working on since October, as well as upcoming projects that would further tax staff. He noted the Planning Department was the only Department that lacked a Deputy Director that could fill in while the Director was absent, so Ms. Gray often logged into meetings during vacation. He admitted that some items had been pushed and he had been more involved in Parking than he should be.

The Mayor opened the table to Council comments.

Mr. Lawhorn reminded that the Rental Needs Assessment began in 2013 and took five years before a Rental Housing Workgroup was generated. He noted the work began eight years prior and was still incomplete. He added that the Parking Subcommittee started in 2016 and Council had yet to vote on any of the recommendations which he felt was directly related to the various parking concerns with recent projects. He explained that the community driven effort took three years and a tremendous level of involvement to create recommendations that were still unanswered. He thought the proposal would resolve some of the issues with recent projects and would offer the opportunity to proactively strategize instead of performing on the fly as Council tried to approve a given development project. He referred to Mr. Coleman's statement and explained that Newark was once a desirable location for development because the City's process was nearly three times faster than the County's, but it was now slowly reaching the County's turn-around times. He emphasized that good development projects maintained the City as a desirable place to live, work, and play but understood that there were also development projects that did not have support. He noted that the City's first line of defense was its Code, which informed developers on what development the City wanted, and the last line of defense was Council approval as it could approve or reject projects.

Mr. Lawhorn shared a frequent complaint from residents that residential neighborhoods were turning into rental districts and emphasized that it was a major concern. He felt that UD should build more dorms but noted that the City had no control over the issue. He explained that the Rental Needs Assessment indicated that the community wanted Council to create more density downtown, away from residential areas, where students could be consolidated. He admitted that Council requested faster execution and staff made it clear that more resources were necessary. He felt that the proposal was a necessary investment that would ultimately provide a positive return because good development projects were one of the best tools to maintain low taxes and generated more tax and utility revenue. He explained the only options were to add resources or remove work and he supported adding more resources. He included the Rental Needs Assessment and the Parking Subcommittee because they were community drive initiatives where Council spent years interacting with residents to determine their desires, but they had not been implemented in nearly a decade. He emphasized the City's need to do better. He supported the first two positions and thought it was a smart move to have temporary two-year positions, as well as a full-time position, so that action items could be executed but allowed the City the opportunity to save funding if the economy turned. He thought it was sensible to have a manager in the Development Division with the addition of two Planners and acknowledged that Ms. Gray was actively involved in the planning and review process as a Director and was responsible for attending various meetings. He agreed that Ms. Gray had an extensive workload, including the Parking Division and Code Enforcement Division, and looked forward to Council comments and felt that all three positions were justified. He suggested another solution could be to reorganize the entire Department but admitted he was unsure how to proceed and believed that the Planning Division needed a manager given the workload.

Mr. Lawhorn reminded that he requested discussion on Code changes in early January and envisioned a full conversation with Council to work through details but was wary of agenda time constraints. He hoped there would be opportunity for a detailed discussion if the plan went through as requested. He reminded that some of the items were codifying the Parking Subcommittee's recommendations, simplifying density requirements by defining density by bedrooms, and creating a specific design criteria to include maximum height and architectural design requirements that could lead to eliminating the Special Use Permit requirement to incentivize developers to follow the specific design criteria. He continued that the City could also review design guidelines for downtown commercial

development as in City Code, Appendix VIII, and potentially manipulate the process so that developers could come before Council earlier which could provide the benefit of preserving staff time on unpopular projects, incentivize developers to reinvigorate dilapidated properties, and provide Council with the opportunity to provide feedback for project edits. He was also in favor of hiring a consultant to conduct a Charette to answer Council's questions in a timely manner.

Mr. Clifton asked Council to state their positions on the two requests outlined in items 5C and 5D. He noted that Mr. Lawhorn sent the memo in January and he apologized for not addressing the topic on an earlier agenda.

Mr. McDermott appreciated Mr. Lawhorn's comments and asked for the timeline to discuss the approval for \$125,000. Mr. Coleman replied that the budget amendment, as proposed, would be two-phased because the management position required an ordinance to create the position before staff could fill it. The direction would be for staff to develop the ordinance for first and second reading, likely after the election, sometime in August, but the consultant and the temporary positions could happen that evening if Council directed staff to amend the budget as outlined in the recommended motion. Mr. McDermott clarified that he wanted to know when there would be discussion for what Council wanted to change in Code. Mr. Coleman replied that there was a tentative timeline included in the memo and said that pending Council direction, the bid award for a consultant would return to Council in late August, the Charette would be addressed in October, and staff would then work with the consultant to develop draft language that would go through the Planning Commission and Council. He pointed that there were three iterations of draft main tenants, draft language, and final language and he considered the timeline to be conservative. He suggested that Council could possibly review the main tenants by November 2021 and flesh out the language over the first half of 2022.

Mr. McDermott asked if the Deputy position would have been requested regardless of the requested Code revision and Mr. Coleman confirmed. Mr. McDermott asked if the request would have been in 2022. Mr. Coleman replied most likely and explained the CARES CDBG money and ARPA funding put extra stressors on the Planning Department and staff thought it was possible to cover some expenses using the ARPA funds because some of the work was COVID-related. He continued that the additional CARES CDBG funding was COVID-related and was therefore an ARPA eligible expense. He explained that any funding that was used from ARPA to cover lost revenue could also be used to cover some of the cost of the positions. Staff was leaning towards adding personnel earlier and intended to separate the request from the budget and bring a proposal forward absent the discussion with the hope to fill the position before the end of the year. Mr. McDermott asked how much would be covered by the funds because he was philosophically opposed to large budget amendments absent the traditional process. He could justify the expense if it was covered by ARPA or other funding but noted that staff did not have the estimates. Mr. Coleman confirmed and reminded that ARPA funding ran through 2024. He asked Ms. Gray for Mr. Fortner's allocated CDBG time and Ms. Gray estimated 50%. Mr. Coleman expected that the additional funding the City received was at least as much as the normal amount and half of a position would be allocated towards CDBG for the remaining years when supplemental funding was available.

Mr. McDermott asked if the Deputy position was permanent and Mr. Coleman confirmed. Mr. McDermott asked if the other positions were temporary two-year positions and Mr. Coleman confirmed. Mr. McDermott asked if staff would be able to meet the timeline for BB/RA Code revisions without the Deputy position and Mr. Coleman did not think it was possible if the planning load remained the same with development activity.

Ms. Creecy agreed with previous Council concerns and agreed that the additions would be needed. She thanked Ms. Gray for the presentation and found the positions necessary to have an orderly process for projects. She agreed with Mr. Lawhorn's assessment that density needed to be pushed from the neighborhoods to downtown and noted that four homes on her block were occupied by students. She supported moving forward.

Dr. Bancroft wanted to carefully consider the proposal and how it fit in the budget so that taxpayers received the greatest value. He agreed that the Planning staff was burdened, and Council needed to support the City's core function. He wanted more direction from the Parking Subcommittee, aside from the suggestion to increase downtown density, and assumed the Rental Housing Needs indicated 50 rooms per year would be a good target but pointed that the needs were unclear after COVID. He understood that monthly room prices for rentals were not out of line given evidence from COVID variability. He acknowledged that development processes were slow and thought that the additional labor would help with the timing bottleneck in the planning process. He was inclined to support both positions and make strong decisions during accounting time.

Ms. Hughes supported the permanent and temporary positions and requested scheduled reviews every six months to gauge effectiveness for the temporary positions. She reiterated her support.

Mr. Clifton agreed with the proposed positions. He referred to Roy Lopata's time on Council and asked if Maureen Feeney Roser was a Deputy Director and if she functioned in that capacity. Mr. Coleman replied that Ms. Feeney Roser did not hold the title but there were two management positions in Planning during that time and there were also two CWA Planners below the Managers: Mike Fortner and Ricky Nietubicz. He explained there used to be four positions but there had only been three since Mr. Nietubicz left. Mr. Clifton felt that the Planning Department's personnel had been decimated and while he appreciated that Ms. Gray participated during her vacations, employees were given vacations so they could decompress, and he was troubled that there was no Deputy to serve as backup. He referred to the upcoming issues with development projects coming forward and recalled Council discussion on the velocity of the number of projects that assumed the volume was temporary. He did not believe the workload was temporary and felt that the Planning Department would be overly occupied for the next five or ten years with parties interested in investing in the City. He received the same complaints as Mr. Lawhorn regarding the appearance of more student housing in traditional family neighborhoods and acknowledged there were parts to the City that had once been family neighborhoods but were now devoid of families. He encouraged a holistic approach, including the topics stated by Mr. Lawhorn, and wanted to move forward with the understanding that no district that was unaffected by the situation. He supported the additional positions and noted that Council trimmed the budget when positions were not needed. He commended past and current Council for being stewards of the City's coffers but thought the situation needed to be reassessed and the Department should be rebuilt to a functional department without the additional stress.

Mr. McDermott asked how staff determined \$125,000 in General Funding was necessary for the Charette. Mr. Coleman replied that staff reviewed the cost of previous initiatives that were similar in scope. He noted there would be some offsetting savings in the contractual line for the Deputy Director position in future and revealed that staff had been adding to the Department's contractual line over the last few years in order to maintain productivity. He pointed to page two of the memo where there were \$226,000 in contractual consulting charges for 2019 and a budget for \$200,000 in 2020 which had been cut due to COVID (also in 2021). He emphasized that the contractual line would continue to increase if the position was not filled because the City paid consultants a higher hourly rate than in-house staff. Ms. Gray reiterated that staff reviewed previous consulting expenses and she estimated \$50,000 for the Charette and the balance of \$75,000 for consulting services. She pointed that \$125,000 was an "up to" amount and if the proposal was successful, staff would issue a Request for Proposal (RFP). Mr. Coleman added that another issue was the timeline for on-boarding so even if staff was permitted to hire a fulltime Deputy, the position would not be on-board until October at the earliest. He explained that due to the accelerated timeline, the contractual line would be higher because staff needed a consultant to assist until the Department was up to speed and the new employee would require on-boarding for a few months. Mr. McDermott appreciated the Department's work and understood the tremendous workload, his only concern was that the City had a budget process every year and he believed that a permanent position should be included in an overall budget process and not through an amendment. He insisted his stance was not intended as a slight against the work of the Director or Department and was rather a concern of public trust and stewardship of the City's finances.

Mr. Clifton clarified that Council would be presented with a first and second reading as a change in the Code and Mr. Coleman confirmed.

The Mayor opened the floor to public comment.

Will Hurd, Chair of the Planning Commission, said that he initially thought he would have to help understand the need for the positions and why they were needed by the Planning Department but was pleased that the Mayor and Council understood. He commended Director Gray for her clear explanation and others for realizing the value. As the chair of the Commission, he was witness to the Department's struggle over recent years in maintaining the development pipeline and trying to move the Commission's work forward. He admitted he was occasionally frustrated when the Commission's annual work plan recycled items that needed to be progressed because there was no staff bandwidth to delve into bigger issues around community work, rentals, parking, and zoning codes. He emphasized that the items required time and effort which presented a challenge while the Commissioners tried to respond to development timelines. He was enthusiastic for the Planning Department to be completely staffed and able to meet its full potential.

There was no further public comment and the Mayor returned the discussion to the table.

17. 5-C. DISCUSSION AND DIRECTION TO STAFF REGARDING ADDING AN ADDITIONAL MANAGEMENT POSITION TO THE PLANNING AND DEVELOPMENT DEPARTMENT – CITY MANAGER/PLANNING AND DEVELOPMENT DIRECTOR

1:28:00

Mr. Clifton asked Mr. Coleman if the direction for the Deputy Director was sufficient and Mr. Coleman confirmed. Mr. Coleman explained that staff would develop an ordinance and budget amendment on which Council would vote following a public hearing. He clarified that an immediate Council decision was unnecessary, and the direction was to determine if staff should expend efforts moving forward. Mr. Clifton asked if a motion could be made to move forward with the RFP to add the other positions to the Planning Department. Mr. Bilodeau noted that page 4 of Ms. Gray's memo offered three recommended motions. Mr. Clifton asked if a motion was necessary for the Deputy Director and Mr. Bilodeau confirmed.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL DIRECT STAFF TO PREPARE A 2021 BUDGET AMENDMENT IN THE AMOUNT OF \$42,000 AND AN ORDINANCE TO ESTABLISH THE DEPUTY PLANNING AND DEVELOPMENT DIRECTOR POSITION, WHICH WILL COME BACK TO COUNCIL FOR APPROVAL AT A FUTURE DATE.

MOTION PASSED. VOTE: 5 to 1.

Aye – Lawhorn, Creecy, Bancroft, Hughes, Clifton.
Nay – McDermott.

1:30:55

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL APPROVE AN INCREASE TO PLANNING AND DEVELOPMENT'S 2021 APPROVED OPERATING BUDGET IN THE AMOUNT OF \$86,000 UTILIZING GENERAL FUND RESERVES TO FUND TWO (2) TEMPORARY FULL-TIME PLANNER I POSITIONS. THESE POSITIONS WILL BE TEMPORARY IN NATURE AND NOT TO EXCEED TWO YEARS FROM THE DATE OF HIRE.

MOTION PASSED. VOTE: 6 to 0.

Aye – Lawhorn, Creecy, Bancroft, Hughes, McDermott, Clifton.
Nay – 0.

1:31:58

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL APPROVE AN INCREASE OF UP TO \$125,000 UTILITIZING GENERAL FUND RESERVES TO PLANNING AND DEVELOPMENT'S 2021 APPROVED OPERATING BUDGET TO FUND THE CITY OF NEWARK DOWNTOWN CHARETTE AND FOR THE PUBLIC ENGAGEMENT AND DRAFTING OF THE CODE REVISION FOR THE BB (GENERAL BUSINESS DISTRICT) AND RA (HIGH RISE APARTMENT) ZONING ORDINANCE.

MOTION PASSED. VOTE: 6 to 0.

Aye – Lawhorn, Creecy, Bancroft, Hughes, McDermott, Clifton.
Nay – 0.

18. 5-E. RESOLUTION NO. 21-__ - FIXING A TIME AND PLACE FOR A RESCHEDULED HEARING ON THE VACATION OF LAWSON STREET (10 MINUTES)

1:33:16

Ms. Bensley read the resolution into the record by title.

Mr. Bilodeau reminded that Council approved a similar resolution earlier in the year and noted a resolution setting a time and date for a hearing was the first step towards vacating a street. He reminded that at the last Council meeting, there was no quorum and Council could not conduct the hearing, so the process restarted. He informed that the new hearing would be heard during the August 23rd Council meeting.

There were no Council or public comments and the Mayor returned the discussion to the table.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT COUNCIL ADOPT A RESOLUTION SETTING AUGUST 23, 2021, AT 7:00 PM AS THE TIME AND PLACE FOR A

RESCHEDULED HEARING ON THE NECESSITY FOR THE CONTINUATION OF LAWSON STREET AS AN EXISTING PUBLIC STREET.

MOTION PASSED. VOTE: 6 to 0.

Aye – McDermott, Lawhorn, Creecy, Bancroft, Hughes, Clifton.
Nay – 0.

(RESOLUTION NO. 21-L)

19. 6. **FINANCIAL STATEMENT:** None

20. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:** None

21. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

A. **Bill 21-16** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Increasing the Purchasing Thresholds for Council Approval (15 minutes)

1:37:49

Ms. Bensley read the ordinance into the record by title.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING.

Mr. Martindale explained that the procedural change would allow for the increase of price thresholds for City contracts, which had not been increased since 2004. The bill would allow the continuation of extensive staff oversight for purchases below the threshold and ensure that amounts above the threshold would come before Council. He reminded that staff now handled three-times as many purchases over the Council’s threshold than in the early 2000’s, and the threshold was currently \$15,000 greater than prior to 2004. He reiterated that all purchases would be subject to explicit Council approval. He informed that the proposal also separated infrastructure or “public works” projects from material and service purchases while increasing infrastructure contract thresholds by a greater amount. He explained that types of projects that would fall into “public works” or infrastructure class of purchase within the proposed increase were minimal and usually fell into the urgently needed or minor construction category. Staff estimated less than 50 types of projects between \$50,000 and \$100,000 since 2002 and only nine infrastructure projects within the bounds were identified between 2016 and 2020:

- Tennis court and hockey court restoration
- Water main break and road patching related work
- Culvert replacement
- Well restoration
- 42 and 44 E. Delaware Avenue building demolitions
- City Hall rear concrete deck and stair construction
- Preston’s Playground Construction
- Preston’s Playground bathroom installation
- Rittenhouse Park Bridge restoration

Mr. Martindale continued that projects in this class were typically infrastructure projects for Public Works, Parks, and Facilities, and left the major projects applicable for formal contract and Council approval.

The Mayor opened the table to Council comment.

Ms. Hughes had no questions.

Dr. Bancroft thought the proposal was reasonable.

Ms. Creecy had no questions.

Mr. Lawhorn received feedback from residents regarding the \$100,000 value for Public Works and said that he fully supported the increase and efficiency gains. He referred to the specific projects that Mr. Martindale listed between \$50,000 and \$100,000 that would no longer require Council oversight and assumed the goal was to make purchasing more efficient and simpler to execute projects that were

necessities. He asked Mr. Martindale to repeat the projects because he received a suggestion that the amounts could be increased but the items for higher amounts be placed on the Consent Agenda. He asked Mr. Martindale to explain the added work if the amounts were added to the Consent Agenda as well as reiterating what types of projects fell into the category. Mr. Martindale replied that most projects in the category were related to Parks and Recreation's court restoration in Folk Park and Dickey Park in 2016, various watermain breaks and road patching, culvert replacements, well restorations, the demolition of buildings at 42 and 44 E. Delaware Avenue to expand Lot #1 (pre-approved through the annual Capital Budget process), City Hall rear concrete deck and stairs, Preston's Playground construction and bathroom installation, and Rittenhouse Park restoration. He noted that short of any urgent matters, the amounts were technically preapproved through the budget process. He suggested that Council could add bid-waive criteria for Public Works projects under \$100,000 to the Consent agenda but was unsure how City Code would be affected.

Mr. Lawhorn asked if the projects were in the budget approval process and part of the CIP or normal budget approval process. Mr. Martindale confirmed that anything related to Facilities or Parks should have been in the Capital Budget previously, but he could not speak to the Public Works Capital Budget. Mr. Coleman interjected that items that would not show up on the CIP for Public Works were items that fell into the Operating Expenditure budget. He reminded that there had been a sewer main failure along White Clay Creek and the repair was over \$50,000, which would have fallen into the proposed category, and was a necessary repair. Staff fixed the breakage and returned to Council for a retro-active approval because Mr. Coleman approved the repair under his emergency purchasing powers. He continued that a more typical expense would be a watermain break repair where 20 to 30 water mains broke each year with many under the roadway, so staff had to patch the road above the break. He noted that if the repair exceeded the current \$25,000 amount, staff completed a full RFP for the repair. He shared an instance where one break exceeded \$25,000 for the road restoration on Kirkwood Highway. He informed that staff did not submit an RFP for two or three repairs and would leave the items fixed with temporary patch material until there were more repairs and staff could submit one large RFP because large companies did not bid small projects and small companies did not usually bid. He emphasized that the work could be done more quickly and for less money if the City was able to hire a small contractor that could do one or two jobs at a time but the current purchasing requirements did not permit the option because patches had gotten so expensive.

Mr. Filasky interjected and explained that staff currently had an economy of scale on the patches and it was extremely difficult to get one patch completed for \$25,000 for an overnight project. He noted if staff could present two or three for up to \$80,000, then it could be possible that six or seven would be done because the companies brought all of their equipment. He suggested that more work could be completed in two nights versus the piecemeal process of individual patches for \$25,000. He referred to Mr. Coleman's retroactive approval and suggested that Council could set a threshold for an amount between \$50,000 and \$100,000 to return to Council. He admitted that there was a contractual line in the Operating Expenditure budget and informed that staff remained within its contractual budget with most of the projects. He confirmed that there had been funding in the Operating Budget to cover the sewer repair that Mr. Coleman approved, but staff lacked the authority to spend over \$25,000 without Council approval. He confirmed the amount was accounted for in the Operating Expense in the contractual line. He continued that most of the cases, aside from true catastrophic emergencies, staff remained within the approved yearly budget. Mr. Lawhorn understood and supported the need for emergency repairs and stated that non-emergency repairs would be included in the normal budgeting process that Council oversaw. He noted the ordinance would provide staff with efficiency improvement for the purchasing process and Mr. Martindale confirmed. Ms. Bensley interjected and informed that anything that was not in the budget and required a budget amendment would still come before Council regardless of the level of the purchase.

Mr. McDermott and Mr. Clifton had no questions. Mr. Clifton recalled previous years when the amounts were much lower and there were many agenda items that made no sense in the scheme of functioning government.

There was no public comment and the Mayor returned the discussion to the table.

Ms. Bensley clarified that if the ordinance was approved, because of the changes that were made to rules of procedure in the last iteration, the contract amounts that went on the Consent Agenda would be on a sliding scale. She continued that contracts requiring Council approval at \$50,000 would have those between \$50,000 to \$100,000 on the Consent Agenda and contracts requiring Council approval at \$100,000 would have those between \$100,000 and \$150,000 on the Consent Agenda.

MOTION BY MR. MCDERMOTT, SECONDED BY DR. BANCROFT: THAT COUNCIL ADOPT BILL 21-16 AS PRESENTED.

MOTION PASSED. VOTE: 6 TO 0.

Aye – McDermott, Lawhorn, Creecy, Bancroft, Hughes, Clifton.
Nay – 0.

(ORDINANCE NO. 21-19)

22. 8-B. BILL 21-17 – AN ORDINANCE AMENDING CHAPTER 13, FINANCE, REVENUE AND TAXATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE FEES FOR LIEN CERTIFICATES (10 MINUTES)

1:52:26

Ms. Bensley read the ordinance into the record by title.

MOTION BY MR. MCDERMOTT, SECONDED BY DR. BANCROFT: FOR SECOND READING AND PUBLIC HEARING.

Ms. Bensley explained that the bill updated the lien certificate structure and fees and reminded that a memo was submitted on the May 10th Council meeting Consent Agenda which outlined the fee structure. She continued that the City Secretary's Office provided a lien certificate for every property transfer within the City which accounted for all monies owed to the City by the seller, prior to the property transfer to the buyer. She shared that the current charge for a lien certificate was \$20, had last been updated in 2004, and was a flat fee, regardless of how late the request was submitted, how often settlement was rescheduled, or how complex the request. Staff reviewed the amount of time spent working on lien certificates and estimated a cost between \$20, for lien certificates only requiring out-of-town utility bills, to over \$45 for lien certificates with more complex bills owed the City for fine assessments or other monies over the typical tax and utility bills. She informed that the costs would be higher if not for the installation of the City's Smart Utility meters which removed the need for physical meter readings at the properties. At the time the memo was originally written, staff had received 182 lien certificate requests in 2021, a 65% increase over 2020, but the updated numbers were 290 for 2021 compared to 174 at the same time the previous year.

Ms. Bensley informed that staff accrued costs for lien certificate processing every time a certificate was processed so if a settlement was canceled or the settlement date was moved, staff was unable to cover the associated costs with a single \$20 fee. Staff asked that lien certificate requests be submitted ten days prior to closing but they were frequently submitted as late as one or two days in advance and did not currently incur a penalty fee. She shared that late requests disrupted employees working on lien certificates because they were required to cease tasks in order to complete the process prior to the settlement date in order to ensure that the City was able to recover monies owed from the seller. The City was one of two municipalities in Delaware that charged for a lien certificate for property transfers and the other municipality charged \$35 for lien certificate with an additional \$35 charge if the lien certificate needed to be updated after being previously processed.

Ms. Bensley recommended a tiered fee structure:

- \$25 for properties outside of the City requiring utility readings only
- \$35 for properties inside the City requiring taxes, utilities, and other assessments to be reviewed
- \$35 for the parcel of multi-unit properties and \$25 for each additional unit associated with the parcel (apartments or mixed-use buildings with residential and commercial settings with multiple sets of meters that needed to be read)

In addition to the fees, staff recommended assessing an additional \$35 for any requests submitted less than 10 days in advance or any request that had been previously processed but had to be updated. The fee would be assessed for each update required and multi-unit properties would pay an additional \$35 for the parcel and an additional \$12.50 for each additional unit associated with the parcel. Staff felt that changing from a flat fee to a tiered fee structure would allow staff to more equitably recover costs from the property transfers that were causing them to be incurred without overburdening those that were not. She informed that staff had amended the original definitions for units and parcels from the memo on the May 10th Council agenda to clarify what could be perceived as a loophole for properties that were exempt from paying taxes.

The Mayor opened the table to Council comment.

Ms. Hughes had no questions.

Dr. Bancroft believed a 17-year update was sensible.

Ms. Creecy asked for clarification on exempt properties. Ms. Bensley replied that the exemptions were for properties that had a senior-tax exemption or disability tax exemption where the owners did not normally pay taxes on the property, so staff did not want to define parcel as a property that paid City of Newark taxes. The ordinance would apply to any property that was transferred between owners regardless of whether they had an exemption on the property. Ms. Creecy asked if the ordinance would apply to residents experiencing financial difficulties or bankruptcy. Ms. Bensley replied that the fee was collected at the settlement of the property so if a resident was selling a property, the fee would be collected as part of the monies and would be remitted to the City by the attorney processing the sale. Mr. Coleman added that the ordinance would apply per unit as opposed to by parcel because one parcel could have multiple units, such as an apartment building.

Mr. McDermott had no questions.

Mr. Lawhorn had technical difficulty.

Mr. Clifton had no questions.

There were no public comments and the Mayor returned the discussion to the table.

MOTION BY MR. MCDERMOTT, SECONDED BY MS. CREECY: THAT COUNCIL ADOPT BILL 21-17 AS PRESENTED.

MOTION PASSED. VOTE: 5 to 0.

Aye – Hughes, Bancroft, Creecy, McDermott, Clifton.

Nay – 0.

Absent – Lawhorn.

(ORDINANCE NO. 21-20)

23. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:

- A.** Request of New Cingular Wireless d/b/a AT&T Mobility for a Special Use Permit for an Accessory Use with Impact to Install a Telecommunications Antenna and Equipment at the City-Owned Property Located at the Newark Senior Center, 200 Whitechapel Drive (15 minutes)

2:02:05

Mr. Clifton read the request into the record and Ms. Bensley informed that the request was also advertised for public hearing in the Newark Post on June 11, 2021, and direct mail notices were sent to the surrounding properties on the same day.

Mr. Fortner informed that the proposed telecommunication facility was being considered as an accessory use to the Newark Senior Center and noted that Exhibit A of the presentation displayed the site on the City-owned portion of the Newark Senior Center, half of which was owned by the University and the other half by the City. He continued that there were two types of accessory uses under City Code and explained that “no impact” generated no adverse community impact such as noise, smoke, dust, odor, or pollution beyond normal background levels detectable at the property line, nor could the accessory structure be taller than the primary structure. He informed that the proposed structure was taller than the primary structure, so it did not meet the criteria for “no-impact” and was considered an accessory structure with impact, which required a Special Use Permit by Council. He stated that the criteria for a Special Use Permit was on page 2 of the presentation and informed that the Planning and Development Department determined the proposal to be an accessory structure with impact because the small tower was taller than the primary structure (43 feet) as well as other considerations concerning the cell tower. He described the existing structure as a lamp post in a parking lot and noted the proposed structure would contain a light post in the parking lot but would extend further. The existing lamp post was 25 feet and the proposal structure would extend to about 43 feet and have a coffee-can sized antenna located on top for cell service; he shared that technical information was available under Exhibit A on pages 4 and 5.

Mr. Fortner continued that because the proposed Special Use Permit was on a property that was larger than one acre, Code required that the Planning Commission review and provide a recommendation to Council. The Commission reviewed the proposal at the June meeting and unanimously voted to recommend in favor for the Special Use Permit. He noted that because the proposed Special Use Permit would not conflict with the purposes of the Comprehensive Development Plan V, would not be injurious to property or improvements in the surrounding area, and because the use could meet all Zoning and Special Use Permit requirements, the Planning and Development Department suggested that Council approve the Special Use Permit for an accessory use with impact to construct a small cell telecommunications facility at the City-owned portion at 200 Whitechapel Drive with departmental conditions stated in the Planning and Development Department report dated May 25, 2021.

Mr. Fortner introduced the applicants' representative, Jonathan Jordan. Mr. Jordan commended Mr. Fortner for the application description and noted that Exhibit A-10 summarized the project and showed the existing light pole and the proposed light pole after it was extended with the cannister antenna. He reiterated that the 25-foot light pole would be extended to 43-feet with a 3-foot cannister on top. He understood that Council was experienced with the sites and informed that there were three witnesses available for questions: Andrew Petersohn, Radio Frequency Engineer, Krup Kolandaivelu, Civil Engineer, and Bob Altenbach, Sign Acquisition Specialist for AT&T.

Mr. Jordan explained the purpose of the proposed site was to offload traffic from a macro tower which were in the 150-foot range and often got overloaded because there were too many users at once. He noted the small cell sites were used to offload traffic when the macro sites were taxed to make service available to users at peak times. He continued that the pole in question resembled a usual utility pole and did not have an impact on the community. He revealed that the antennas were well within the FCC limits for emissions and were at 7.5% cumulative exposure levels at the FCC standard at all locations of public access and were at 2.3% FCC standards at ground level. He ensured that the project would comply with all FCC and FAA regulations, that the size of the pole was compatible with the character of the surrounding community, and did not generate any traffic, noise, odor, or demand on public services, and would be visited once a month by a technician to ensure proper operation. He continued that the standard was whether the pole had an adverse impact on the community and the applicants and representatives suggested that the pole would have a positive impact on the community because more people were attached to their phones and used them in many aspects of their lives. He noted that more than 70% of all calls were made from cell phones and more than half of all households did not have a landline so reliable cell service was essential. He repeated that the project received a unanimous recommendation for approval from the Planning Commission and the Planning Department.

The Mayor opened the table to Council comments.

Ms. Hughes had no questions.

Dr. Bancroft asked what the units were for 7.5% radio frequency and asked if the applicants vouched that there was no real human risk due to radiation. Mr. Jordan reminded that the applicants submitted a report prepared in accordance with FCC standards, Exhibit A-7, that was authored by Mr. Petersohn. He reiterated that there were Federal Standards and the applicants were at 2.3% at ground level, and 7.5% of the maximum level at 43-feet in the air which was a conservative level set by the government. Dr. Bancroft asked if some of the units were above 300 megahertz. Mr. Petersohn replied that standard adopted by the FCC was measured in power density. He explained that the applicants used the FCC prescribed formulas to determine anticipated power density because the facilities were not yet approved and constructed. The formulas were applied to determine the anticipated power density knowing the specific parameters of the site, including the antenna centerline height, power output, antenna model, the model's antenna pattern, and other items included in formulas. He then took the parameters and applied them to the FCC prescribed formulas and applied conservative assumptions for an upper limit output including 100% ground reflection which doubled the units of power, quadrupled power density, assumed a 24/7/365 exposure, assumed maximum gain of the antenna, and assumed maximum loading of the facility. He continued that because the facilities were lower powered, they were offset by the more approximate location with respect to the ground because they were shorter, which resulted in exposure levels that were on the order of those that were seen from the macro sites. He continued it was an intentional design feature because the user still needed the same amount of power at the ground level. He continued that the facility would be examined for exposure level on the ground level for passersby and elevated positions because the sites were shorter and there could be potential rooftops or balconies close by. He revealed that the closest rooftop was 90 feet away so the crew examined the rooftop and the ground level immediately adjacent to the facility and discovered that the levels were less than 2.3% of the applicable limit at all locations on the ground and the closest rooftop 90 feet away registered levels of less than 7.5%. He reiterated that the team demonstrated compliance. Dr.

Bancroft clarified that it was 2% of the annual expectation for a period of time and asked if the applicants could verify that the units were watts per unit area. Mr. Petersohn confirmed and revealed that the yearly cumulative was slightly off and was really a continuous exposure assumption but there was some time averaging that could be applied. He explained that the team did not do time averaging when considering worst case and assumed continuous exposure for which there was criteria as he previously addressed. Dr. Bancroft appreciated the careful consideration and detail. Mr. Petersohn referred to Dr. Bancroft's comment of 300 megahertz and confirmed that all of the channels being used were over 300 megahertz and AT&T was licensed for a number of channels so 700, 850, 1900, 2100 and 39 gigahertz would all be installed.

Ms. Creecy had no questions.

Mr. Lawhorn was unavailable.

Mr. McDermott had no questions.

Mr. Clifton was present when Council approved the cellphone tower at Windy Hills water tower in 1997 and he recalled that the presenter claimed that cellphones operated above the AM band. Mr. Petersohn confirmed they operated significantly above the AM band and were above the FM band. He revealed that the lowest frequency currently used by commercial carriers were around 1600-megahertz range and was significantly higher than the FM band. Mr. Clifton asked if the amount was egregious and Mr. Petersohn confirmed that it was most similar to public safety radio power levels and were much lower than the AM channels transmitted on the order of kilowatts. Mr. Clifton asked if it was around 800 or 900 megahertz that the public safety operated on and Mr. Petersohn confirmed. He admitted that the facility would have channels in 700, 850, 1900, and 2100 megahertz but was most similar to public safety radio. Mr. Clifton received phone calls regarding concerns that the waves would cause cancer and shared that the American Cancer Society website indicated there was no definitive evidence that cellphone towers caused any form of cancer with the caveat that the research was ongoing. Mr. Petersohn confirmed that the summary was correct for the American Cancer Society's stance and reiterated that the applicants were required to demonstrate compliance with the FCC guidelines for exposure. Mr. Jordan interjected that the FCC reevaluated the exposure limits and issued a memo and order on December 4, 2019, after a 6-year study. He noted the standards were established in 1997 and the 2019 report reaffirmed the 1997 limits and emphasized that the FCC continuously evaluated the potential health effects.

The Mayor opened the floor to public comment.

Ms. Bensley read a request from Robert T. Walters, Jr., President of the Whitechapel Village Condominium Association.

"I would appreciate your help during the Newark City Council meeting this evening regarding Item 9A on the agenda. Please ask these two questions on my behalf:

1. Will cellular customers, other than AT&T, benefit from the new antenna at 200 Whitechapel Drive?
2. What health risks will the neighbors in the vicinity of 200 Whitechapel Drive be exposed to with the new antenna?"

Mr. Clifton recognized Mr. Petersohn and Mr. Jordan to answer the questions. Mr. Jordan felt that the second question had been answered and noted that the FCC trumped everything else in terms of health associated with the antennas. Mr. Bilodeau confirmed that Federal regulations stated that if the tower met or was under the frequency regulations for emissions, the City could not deny the application for environmental concerns. He reiterated that if the tower met the Federal regulations for emissions, there was no basis for denial for environmental concerns. Mr. Jordan assumed that the installation would only affect AT&T but there was nothing to stop another carrier from swapping out an existing pole and installing an antenna on top. He reiterated that the small cells did not provide much of a community impact and he did not see how other providers would be impacted by the installation. Mr. Petersohn confirmed that the tower would benefit customers of other carriers and would not interfere with reception.

There was no further public comment and the Mayor returned the discussion to the table and reminded that Council had three standards for review.

MOTION BY MR. MCDERMOTT, SECONDED BY DR. BANCROFT: THAT COUNCIL APPROVE A SPECIAL USE PERMIT FOR 200 WHITECHAPEL DRIVE ACCESSORY USE WITH IMPACT TOWER BROADCASTING AND TELECOMMUNICATIONS AS REQUESTED.

Mr. McDermott voted yes because the request would not adversely affect the health and safety of persons residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware, and would not be detrimental to the public welfare or injurious to the property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware and will not be in conflict with the purposes of the Comprehensive Development Plan of the City.

Ms. Creecy, Dr. Bancroft, Ms. Hughes, and Mr. Clifton voted yes for the reasons stated by Mr. McDermott.

MOTION PASSED. VOTE: 5 to 0.

Aye – Hughes, Bancroft, Creecy, McDermott, Clifton.

Nay – 0.

Absent – Lawhorn.

24. 9-B. REQUEST OF NATHAN AND THANYALUCK CLARKE FOR A SPECIAL USE PERMIT FOR AN IN-HOME DAYCARE CENTER AT THE RESIDENCE LOCATED AT 954 DEVON DRIVE (15 MINUTES)

2:27:28

Ms. Bensley read the request into the record.

Mr. Fortner informed that the application was for an in-home daycare for up to nine children in an owner-occupied, single-family house at 954 Devon Drive. He continued that the property was zoned RS and the in-home daycare had been operating for several years in the Brookside neighborhood outside of the City. He explained that the Brookside property was undergoing renovations so the Clarke family sought to temporarily relocate their daycare for up to 18 months at their Newark property, which would serve as their residence during the renovations. He stated the zoning code requirements for a daycare were on page 2 of the report and confirmed that the applicants' property exceeded the minimum requirements. He added that page 2 of the report included the criteria for Council to review a Special Use Permit and noted that the Comprehensive Development Plan V indicated uses such as schools, nursing homes, community centers, and daycare centers could be satisfactorily accommodated in a residential district. He reiterated that the request was for an in-home daycare so the property would remain residential in both neighborhood and as the primary use. He confirmed there were several same uses throughout the City and were not sources of community disruption and were beneficial to the neighborhoods for providing affordable daycare that was easily accessible to families with children.

Mr. Fortner revealed the Departmental comments were listed on page 3 of the presentation and because the proposed Special Use Permit would not conflict with the purposes of the Comprehensive Development Plan V, because the proposed use with Departmental recommendations would not be injurious to property or improvements in the surrounding area, and because the use could meet all Zoning and Special Use Permit requirements, the Planning and Development Department recommended that Council approve the Special Use Permit for a home occupation – home daycare – with departmental conditions at the property at 954 Devon Drive in Newark. He introduced Mr. and Mrs. Clarke.

Mr. Clarke reiterated that the request was temporary, and the family owned two properties in Brookside and on Devon Drive. He repeated that the Brookside property would undergo renovations to improve the use for the daycare and the daycare could not continue operations at that location throughout the renovations. The Clarkes wanted to move into the Devon Drive property for up to 18 months but would likely be significantly less. When the renovations were complete, the daycare would resume operations at the Brookside property and not remain at the Devon property. He shared that neighbors were concerned about parking and he informed that there would not be many children at the daycare and there would likely be six children but could go up to nine in the summer months. He stated that the driveway was large, and parents almost never had the same drop-off times and were only present for a few minutes each. He did not believe there would be a parking issue on the street and confirmed it had not been an issue in Brookside for the last 14 years. He explained the children were all young and were not loud. He stated that the daycare had never received a noise complaint.

The Mayor opened the table to Council comment.

Dr. Bancroft noted the situation was temporary and wanted to consider local businesses. He acknowledged there was ample yard space and believed the Clarkes came before Council in good faith. He was in favor of the request.

Ms. Creecy would vote yes and asked for the hours of the business and the maximum number of children attending the daycare. Mr. Clarke replied the maximum number would be nine but would not likely exceed six. If the number did go to nine then it would only be during the summer months. He stated that the hours were 7:30 a.m. to 5:30 p.m. Monday through Friday.

Mr. McDermott had no questions.

Mr. Clifton was concerned with the number of children because a daycare was approved for eight children at the Hunt at Louviers on a huge property. He was also concerned with parking and asked if it was in compliance with the State and State licensing. Mr. Clarke confirmed that the supervisor from the Office of Childcare Licensing inspected the property the previous Friday and approved the property, but the Clarkes could not obtain an official letter of approval until the Fire Marshal officially approved. The Fire Marshal visited the previous Thursday and provisionally approved the property but could not officially approve the property until Council approved. He maintained that he and his wife always followed the guidance of the Office of Childcare Licensing, which was controlled by the State of Delaware. He noted that Ms. Clarke was required to renew her license every year and reiterated that all was within compliance. Mr. Clifton asked Mr. Bilodeau if the approval dissolved in 18 months. Mr. Bilodeau confirmed that Council could attach conditions and suggested language indicating that the Special Use Permit was good for 18 or 20 months. Ms. Bensley informed that the Item 2B in the Departmental comments discussed a condition that the permit shall expire after 18 months. She noted if the motion, as recommended, was adopted where it was approved with Department conditions, that would be included.

There was no public comment and the Mayor returned the discussion to the table.

Ms. Hughes supported the request.

MOTION BY MR. MCDERMOTT, SECONDED BY MS. CREECY: THAT COUNCIL APPROVE A SPECIAL USE PERMIT FOR THE HOME OCCUPATION – HOME DAYCARE – WITH THE DEPARTMENTAL CONDITIONS OUTLINED IN THE DEPARTMENT MEMO FROM JUNE 21, 2021, FOR THE PROPERTY AT 954 DEVON DRIVE IN NEWARK.

Mr. McDermott voted yes because the Special Use Permit would not adversely affect the health and safety of persons residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware, and would not be detrimental to the public welfare or injurious to the property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware and will not be in conflict with the purposes of the Comprehensive Development Plan of the City.

Ms. Creecy, Dr. Bancroft, Ms. Hughes, and Mr. Clifton voted yes for the reasons stated by Mr. McDermott.

MOTION PASSED. VOTE: 5 to 0.

Aye – Hughes, Bancroft, Creecy, McDermott, Clifton.

Nay – 0.

Absent – Lawhorn.

Mr. Clifton reminded that there would be no meeting on the upcoming Monday in deference to the holiday.

25. Meeting adjourned at 9:37 p.m.

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

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